THE HON'BLE SRI JUSTICE V.ESWARAIAH

WRIT PETITION No.27547 of 1998

Between:

E.Chennappa and others.

.. PETITIONERS

and

The Government of Andhra Pradesh and others.

.. RESPONDENTS

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ORDER:

Heard the learned counsel appearing for the petitioners and the

learned Government Pleader for Revenue appearing for the respondents.

Petitioners question the order of the Special Commissioner of Land Revenue, Andhra Pradesh, Hyderabad-2nd respondent in proceedings No.BCW1/711/97, dated 06-08-1998, in setting aside the order of the Joint Collector and Additional Magistrate, Anantapur-3rd respondent, dated 16-06-1997, in proceedings No.Dis.A4/6562/96.

The brief facts of the case are that Sy.Nos.1947 and 1948 for the land admeasuring Ac.2-90 cents and Ac.1-36 cents respectively situated at Bukkapatnam village were formed out of unassessed waste block in Sy.No.1533. After change of classification of the land from unassessed waste block to assessed waste block, the land admeasuring Ac.4-26 cents i.e., Ac.2-90 cents and Ac.1-36 cents in Sy.Nos.1947 and 1948 was assigned in favour of the 6th respondent, while he was working as a soldier, vide proceedings No.D.A.R.Dis.No.22/1402, dated 26-05-1993. Aggrieved by the same, the petitioners herein filed an appeal before the Revenue Divisional Officer, Penukonda-4th respondent on the ground that each of the petitioners is in possession and enjoyment of small extents of land ranging from 5 cents to 10 cents and as the land in question is situated adjoining to their lands, the said land is to be treated as part and parcel of their self acquired land and they have been continuously enjoying the same and without evicting the petitioners, allotting the said land in favour of the 6th respondent is not just and proper. It is further stated that allotment of the said land in favour of the 6th respondent is illegal and unsustainable, as he is not at all a cultivator and he never cultivated the land in question. Accordingly, the said appeal was dismissed on 28-08-1996 in D.Dis.No.4178/93/A, holding that in the

enquiry it was revealed that the 6th respondent was found eligible for assignment of the land in question and accordingly, the District Collector, Anantapur, directed the Mandal Revenue Officer, Bukkapatnam, in proceedings No.L.Dis.No.A4/3225/93, dated 22-04-1993, to assign the land in question in favour of the 6th respondent, after following required formalities prescribed under Board Standing Order. It is stated that after following prescribed formalities only, the said land has been assigned in favour of the 6th respondent. Immediately after assignment, the 6th respondent was put in possession of the said land and he has been cultivating the same by raising and harvesting crops. The possession was also recognized by the Revenue Authorities and in fact pattadar pass books and title deeds were also granted in favour of the 6th respondent. It is also stated that the 6th respondent is purely depending upon the land in question and there is no other source of livelihood. It is stated that all the petitioners herein are big pattadars and they are ineligible for assignment. The 6th respondent belongs to Bukkapatnam village and after getting enquiry about his nativity and residential particulars only, the land in question had been assigned in favour of the 6th respondent. Therefore, there was no illegality in assigning the said land in favour of the 6th respondent. As against the said order of the 4th respondent, dated 28-08-1996, the petitioners herein filed a revision before the 3rd respondent. The 3rd respondent through order, dated 16-06-1997, in proceedings No.D.Dis.A4/6562/96, allowed the revision on the ground that the case attracts the provisions of Board Standing Order paras 10(2) and 10(5). According of which, the persons, who are in continuous possession and occupation of the land, will get preference and the adjoining lands may be

assigned on payment of full market value, though they are not landless poor. Aggrieved by the said order, the 6th respondent filed an appeal before the 2nd respondent. The 2nd respondent, after considering the contentions of the petitioners and the relevant records, allowed the appeal setting aside the order of the 3rd respondent, dated 16-06-2007, while upholding the order of the 4th respondent, dated 28-08-1996.

This Court while admitting the writ petition granted interim suspension on 24-12-1998, but the said interim order was vacated by order, dated 25-04-2000 in W.V.M.P.No.571 of 2000 holding that the 2nd respondent was right in stating that the 6th respondent was eligible to get assignment of the land and the petitioners were only encroachers and, therefore, there was nothing wrong in assigning the land to the 6th respondent. It is further stated that the land belongs to the Government and the Government have every right to assign the land in accordance with rules and the 6th respondent, who is an ex-service man, is entitled for assignment of the land.

A perusal of the records and the impugned orders goes to show that the new survey numbers 1947 and 1948, which were formed out of old Sy.No.1533, are situated on the southern side of Sy.Nos.1531 and 1532, and the patta lands of the petitioners are situated adjacent to the land in question. Therefore, each of the petitioners encroached small extents of land ranging from 5 cents to 10 cents in Sy.No.1533 and using it as an excess to their patta lands and were interfering with the peaceful possession and enjoyment of the land in question. Admittedly, the petitioners have no right over the land in question as the Government is the absolute owner and it alone can assign the same to the eligible persons according to rules.

In the counter, it is stated that all the petitioners are rich and none of them are eligible for assignment, even under market value as the land is a scarce commodity and it is of diminishing nature. The demand for assignment of land by poor eligible persons is more and the Government assigned the land available with it. Therefore, the 5th respondent rightly assigned the land in question in favour of the 6th respondent as per rules.

Insofar as the possession is concerned, the record goes to show that immediately after assignment of the land in favour of the 6th respondent on 26-05-1993, he was put in possession in the month of July 1993 itself and he has been cultivating and enjoying the said land. Admittedly, the stay was vacated long back and the 6th respondent is in continuous possession and enjoyment of the land in question. Therefore, I am of the opinion that there is no infirmity legal or otherwise to interfere with the impugned order passed by the 2nd respondent on 06-08-1999, as the assignment was made in accordance with rules.

Accordingly, the writ petition is dismissed. There shall be no order as to costs.

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26-09-2007

Prv